IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

OP.No. 1070 of 2001(B)

PETITIONER:

N.BABURAJAN, SREEKRISHNA VILASAM,
KALAKODU, BHOOTHAKKULAM,
KOLLAM DISTRICT.

BY ADV. SRI.P.R.RAMACHANDRA MENON
SRI.K.S.MANU (KOLLAM)

RESPONDENTS:
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1. **THE STATE OF KERALA,**
REP.BY THE CHIEF SECRETARY,
THIRUVANANTHAPURAM.

2. **THE DISTRICT EDUCATIONAL OFFICER,**
KOLLAM.

3. **THE PRINCIPAL,**
MEENAKSHIVILASAM GOVT. H.S. PEROOR,
KOLLAM.

4. **THE KERALA STATE FINANCIAL ENTERPRISES LTD.,**
REP.BY ITS BRANCH MANAGER,
KADAPPAKKADA, KOLLAM.

BY GOVERNMENT PLEADER
SRI.E.K.NANDAKUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.1070/2001

ORDER ON CMP. NO.1718/2001 IN OP. NO.1070/2001

DISMISSED

10.07.2007 SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PENSION PAYMENT ORDER PART i NO.23205903 DT. 27.3.2000.

EXT.P1(a):- COPY OF THE PENSION PAYMENT ORDER PART II NO.23205903 DT. 27.3.2000.

EXT.P2:- COPY OF THE COMMUTATION PAYMENT ORDER.

EXT.P3:- COPY OF THE GRATUITY, PAYMENT ORDER.

EXT.P4:- COPY OF THE STOP PAYMENT ORDER DT. 20.8.99.

/TRUE COPY/

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No.1070 of 2001-B.

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Dated this the 10th day of July, 2007.

J U D G M E N T

This writ petition is filed by the petitioner aggrieved by Ext.P4, as a result of which the petitioner could not draw the retirement benefits as there was an amount of Rs.20,998/- due to the K.S.E.F. Pursuant to the interim order dated 29-1-2001 non-liability certificate to the petitioner except for an amount of Rs.20,998/- has been issued and the petitioner has already drawn that amount. What remains is the dispute regarding Rs.20,998/- which is shown as a liability against him.

2. The petitioner was a surety to one Vijayakumar, Music Teacher of M.V.G.H.S., Peroor. It appears that there was default on his part in paying the instalments to the K.S.F.E. According to the petitioner, there was no agreement between the petitioner and the 4th respondent for realising any amount from the DCRG/Pensionary benefits if the principal loanee has defaulted in paying the instalments. He was only a surety and the principal loanee is still in service also. It is on theses grounds he has challenged Ext.P4.

3. There is no counter-affidavit filed by the 4th respondent. The liability, if any, can be recovered from the DCRG/pensionary benefits if express clause to that effect is provided in the agreement which was executed

at the time when the loan was sanctioned. In the absence of such an agreement the 4th respondent was not justified in seeking to recover an amount of Rs.20,998/- from the retirement benefit of the petitioner. Admittedly, the agreement did not contain such a clause.

4. Therefore, Ext.P4 is quashed and there will be a direction to the 3rd respondent to take steps to disburse the withheld amount of Rs.20,998/- representing the retirement benefits to the petitioner within a period of six weeks from the date of receipt of a copy of this judgment. This will not stand in the way of the 4th respondent proceeding against the principal debtor for realising any balance amount. The 3rd respondent will take steps to issue the non-liability certificate for enabling the petitioner to get the amount disbursed from the competent authority.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-